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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,269	12/18/2001	Richard J. Chouinard	ERIE / 73	4951

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EXAMINER
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NAGPAUL, JYOTI

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/024,269	<b>Applicant(s)</b> CHOUINARD ET AL.	
	<b>Examiner</b> Jyoti Nagpaul	<b>Art Unit</b> 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 45-52 and 58-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 45-52 and 58-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Amendment filed on May 5, 2005 is acknowledged. Claims 45-52 and 58-64 are pending.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. **Claims 45-52 and 58-64** are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis in view of JP 52 118390 (Herein '390') and Seaton.

Davis discloses a rack (1) for transporting and processing of slides. The rack (1) comprising substantially planar and parallel opposed first (18) and second side (19) walls, and substantially planar and parallel opposed end walls (13,14), each of the end walls having ends rigidly connected to ends of the first and second side walls (18,19). The opposing ends of the rack are connected by a rod (14). The rack (1) includes a first support bar (17, Figure 2) comprising a first longitudinal edge (17) extending over a length. As shown in Figure 1, a first opening adapted to support one end of a slide. Davis further discloses a second support bar (see Figure 2) a third longitudinal edge (17) extending over a length. As shown in Figure 1, the rack comprises of a second opening disposed opposite the first opening the first opening and adapted to support an opposite end of the slide (5). The rack (10) supporting the ends of the slide outside of the slide case during the slide processing operation. (See Col. 1, Lines 8-11) Davis discloses each of the pair of openings is diamond shaped with two opposed corners of the diamond shape. (Fig. 4) The frame further comprises of first (13) and second holes (14). The first and second holes are connected at the ends of the frame in order to facilitate picking up and carrying the rack. Davis discloses the frame further comprises of first (13) and second holes (14). The first and second holes are connected at the ends of the frame in order to facilitate picking up and carrying the rack. Davis discloses the slide case further comprises a bag containing the cover positioned on the base containing the rack and the bag comprises an aluminum vacuum sealed barrier bag.

Davis discloses the first and second support bars angles downward from a respective inner surface toward lower edges of the opposed ends of the frame. The first and second support bars form an acute angle with the respective inner surface. (390, Fig. 4) (Davis, Fig. 1)

Davis does not specifically disclose the first and third longitudinal edge connected to an inner surface of the first and second side wall, respectively to cantilever the first support bar from the first side wall. Davis does not specifically disclose the second and fourth edge being deflectable with respect to the first side wall and the whereas the second and fourth edge being spaced away from a lowermost portion of the rack to provide a space below the second longitudinal and fourth longitudinal edge, respectively, adapted to drain fluid used in a slide. Davis does not specifically disclose a first latch portion disposed on the base and a second latch portion disposed on an end wall and wherein the first latch portion comprises a detent disposed on a wall of the base, the second latch portion comprises a recess disposed in the end wall and the end wall is deflectable. Davis does not specifically disclose a projection.

390 discloses an IC wafer transporting container includes a bottom box (2), lid (1), and a rack (Refer to Fig. 1). The bottom box (2) is composed of a base with four walls. (2, Refer to Fig.1)(Line 8, pg. 3 in specification) 390 further discloses a rack (refer to Fig. 5) located in the bottom box (2). The frame of the rack consists of first and second sides (Refer to Figure 1). The opposing ends of the first and second side are connected. The first side includes a first support bar (3), the edge is connected to an inner surface of the first side (8) to cantilever the support bar from the first side (8). The

first support bar (3) deflects with respect to the first side (5), and the first opening for supporting one end of a slide. (Refer to Fig. 4) The second side contains a second support bar (3), the edge is connected to an inner surface of the second side (8) to cantilever the second support bar from the first side (8). The second support bar (3) deflects with respect to the second side (5), and a second opening for supporting the opposite end of the slide. (Refer to Fig. 4). 390 further discloses a cover/lid (1) with a projection (18) on the inner surface. The projection (18) includes on rib extending perpendicular to the plane of the slide as shown in Figure 4. The lid is positionable on the bottom box (2) to cause the projection (18) on the cover to press against the slide and deflect the support bars (3) to secure the slide between the rack and the cover (1). (Refer to Fig. 4) 390 discloses a first latch (8) on the base and a second latch (20) on the frame thus on positioning the rack within the base, the first and second portions are placed in juxtaposition to releasably secure the rack in the base. 390 and Davis both disclose the first and second support bars angles downward from a respective inner surface toward lower edges of the opposed ends of the frame. The first and second support bars form an acute angle with the respective inner surface. (390, Fig. 4) (Davis, Fig. 1) 390 discloses a first latch (8) on the base and a second latch (20) on the frame thus on positioning the rack within the base, the first and second portions are placed in juxtaposition to releasably secure the rack in the base. 390 discloses a projection (18) includes on rib extending perpendicular to the plane of the slide as shown in Figure 4.

It would have been obvious to one of the ordinary skill in this art at the time of the invention by applicant to modify the system of Davis such that the rack of Davis is

inserted in the container of 390 such that the first longitudinal edge (17) extending over a length of and is connected to an inner surface of the first side wall of 390 to cantilever the first support bar from the first side wall in order to increase transportation safety of the slides exactly as it is indicated by '390.

Davis and 390 does not specifically disclose a space adapted to drain fluid.

Seaton teaches moving and positioning test sample tray across a base pan to various stations of a sample testing machine during processing of the slides. The test sample tray (26) comprises plurality of test cards/slides. The system comprises of drain holes (25A, 25B) that are provided on the bottom of the base pan 24 for allowing any spilled fluids on the base pan to be carried out of the machine (20).

It would have been obvious to one of the ordinary skill in this art at the time of the invention by the applicant to further modify Davis-'390 system such that the second longitudinal and fourth edges are spaced away from a lowermost portion of the rack to provide a space below the second longitudinal edge and fourth longitudinal edges are adapted to drain fluid in order to facilitate in draining of excess fluid or reagent supplied by the slides during and prior to operation as similarly taught by Seaton because it expands the application of Davis-'390 system for handling wet slides such as disclosed by Seaton.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 45-52 and 58-64 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Nagpaul whose telephone number is 571-272-1273. The examiner can normally be reached on Monday thru Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JN



**YELENA GAKH  
PRIMARY EXAMINER**